

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CURTIS AMMERMAN and
JENNIFER AMMERMAN,

Plaintiffs,

v.

3:08-cv-1026

BRUCE GARDNER,

Defendant.

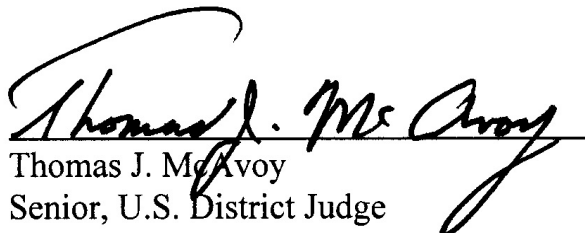
THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiffs commenced the instant action seeking to recover damages arising out of an automobile accident. Defendant moved to dismiss on the ground that Plaintiff failed to plead that he sustained a serious injury within the meaning of N.Y. Ins. Law § 5102. In response to the motion, Plaintiff filed an Amended Complaint pleading serious injury. The filing of an Amended Complaint supercedes a prior Complaint and typically moots the motion to dismiss. See Byng v. Campbell, 2009 WL 152708 (N.D.N.Y. 2009). Because the motion to dismiss is directed only to the original Complaint and the Amended Complaint cures the defects raised in the motion to dismiss, the motion to dismiss is DENIED.

IT IS SO ORDERED.

Dated: February 18, 2009


Thomas J. McAvoy
Senior, U.S. District Judge